

Message Text

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ACTION EA-10

INFO OCT-01 ISO-00 PM-03 NSC-05 SP-02 SS-15 RSC-01 L-02

H-01 IGA-01 CIAE-00 INR-07 NSAE-00 MC-01 OMB-01

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R 151230Z JAN 75

FM AMEMBASSY SAIGON

TO SECSTATE WASHDC 1903

SECDEF WASHDC

INFO CINCPAC HONOLULU

DSA CAMERON STATION VIRGINIA

C O N F I D E N T I A L SAIGON 0552

E.O. 11652: GDS

TAGS: MASS VSUIHL

SUBJECT: PROPERTY DISPOSAL OF SCRAP IN VIETNAM

REF: SECDEF 242135Z DEC 74 (NOTAL)

1. REFTEL TRANSMITTED EXCERPTS FROM AN OCTOBER 29, 1974 LETTER TO CONGRESSMAN ASPIN WHICH CONCLUDED THAT MILITARY SCRAP REMAINING IN VIETNAM THAT WAS NOT DESIGNATED FOR TRANSFER PURSUANT TO THE US-GVN AGREEMENT PRIOR TO JULY 1, 1974 WOULD HAVE TO BE REPORTED AGAINST THE DAV APPROPRIATIONS CEILING AT ACTUAL VALUE. REFTEL ALSO TRANSMITTED THE DOD GENERAL COUNSEL'S CONCURRENCE TO THIS POSITION; INTERPRETED "ACTUAL VALUE" AS THE GROSS PROCEEDS OF THE SCRAP SALE; AND ASKED FOR REPORTS ON TONNAGES OF USG-TITLED SCRAP TRANSFERRED TO THE GVN SINCE JULY 1, 1974 AND ESTIMATES OF THE VALUE OF THE AMOUNT ON HAND.

2. WE ASSUME THAT DOD'S INTENTION IS TO REDUCE AVAILABLE DAV APPROPRIATIONS BY ALL PROCEEDS REALIZED FROM SCRAP SALES SINCE JULY 1, 1974. IF THIS IS THE CASE, WE WOULD SUGGEST THAT CONCERNED OSD OFFICIALS REFER TO THE GOVERNMENT-TO-GOVERNMENT AGREEMENT GOVERNING THE TRANSFER OF SCRAP, EFFECTED BY THE US AND RVN EXCHANGE OF NOTES DATED NOVEMBER 8, 1972, AND DECEMBER 14, 1972, RESPRCTIVELY.

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THIS AGREEMENT SPECIFICALLY PROVIDED THAT "ALL DESIGNATED USG

MILITARY SCRAP LOCATED IN VIETNAM AS OF THIS DATE AND ANY SUCH SCRAP GENERATED IN VIETNAM HENCEFORTH SHALL BE TRANSFERRED UPON DESIGNATION, PURSUANT TO THIS AGREEMENT, TO THE GVN AS USG MILITARY ASSISTANCE SERVICE FUNDED (MASF)." UNDER THE AUTHORITY OF THIS AGREEMENT, THE US ARMY PROPERTY DISPOSAL AGENCY, VIETNAM, AND THE CENTRAL LOGISTICS AGENCY, RVN AGREED TO THE TRANSFER OF ALL RPT ALL UNRECOVERED SCRAP AMMUNITION BRASS, FERROUS SCRAP (INCLUDING STEEL SHELL CASINGS), AND AIRCRAFT SCRAP WHEREVER SUCH SCRAP MAY NOW BE LOCATED WITHIN THE REPUBLIC OF VIETNAM, THESE BLANKET TITLE TRANSFERS WERE ENTERED INTO ON DECEMBER 30, 1972; JANUARY 8, 1973; AND JANUARY 17, 1973, RESPECTIVELY.

3. BY VIRTUE OF THESE AGREEMENTS, THEREFORE, ALL SCRAP GENERATED IN VIETNAM PRIOR TO THESE DATES, HAD, TO USE THE GAO'S TERMINOLOGY, BEEN DESIGNATED FOR TRANSFER PURSUANT TO THE AGREEMENT. HENCE, THE PROCEEDS RESULTING THEREFROM ARE NOT CHARGEABLE TO THE DAV APPROPRIATION. TO DETERMINE OTHERWISE WOULD HAVE US UNILATERALLY ABROGATING A VALID INTERNATIONAL AGREEMENT.

4. WE ACKNOWLEDGE THAT SCRAP GENERATED SUBSEQUENT TO THE ENACTMENT OF PUBLIC LAW 93-365 COULD THEORETICALLY FALL WITHIN THE PURVIEW OF THE LAW, BUT EVEN HERE IT WOULD SEEM THAT A CASE OF DOUBLE LIABILITY WOULD EXIST IN THAT THE DAV WOULD, OVER TIME, BE CHARGED TWICE FOR THE SAME ITEM --THE INITIAL FULL PRICE AND THE ACTUAL VALUE AT THE TIME OF SALE AS SCRAP. FURTHERMORE, IT WOULD BE EXTREMELY DIFFICULT TO DATE A GIVEN PIECE OF SCRAP TO DETERMINE WHETHER IT WAS GENERATED AFTER PL 93-365 WAS ENACTED. INDEED, UNLESS THERE WERE CLEAR EVIDENCE TO THE CONTRARY, THE LOGICAL CONCLUSION WOULD BE TO ASSUME THAT IT WAS GENERATED BEFORE.

5. ASIDE FROM THE LEGALITIES OF THE ISSUE, THERE IS A PRACTICAL CONSIDERATION WHICH WARRANTS CONTESTING THE GAO OPINION. IF THIS OPINION WERE TO PREVAIL AND THE DAV APPROPRIATION CHARGED FOR SCRAP SOLD SINCE LAST JULY 1, WE WOULD HAVE NO RECOURSE BUT TO RECOMMEND TO THE HIGHEST AUTHORITIES IN WASHINGTON THAT THE GVN BE ADVISED TO DISCONTINUE THE SALE OF SCRAP IN VIET NAM.

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WE ARE SURE THAT APPROVAL WOULD BE AUTOMATICALLY FORTHCOMING, SINCE IT IS OBVIOUS THAT USG HAS PARAMOUNT INTEREST IN ENSURING THAT DAV FUNDS AVAILABLE FOR AMMUNITION AND POL, ALREADY OBVIOUSLY INADEQUATE, ARE NOT FURTHER REDUCED. IN ANY EVENT, THE US GOVERNMENT WOULD BE BACK IN THE VIET NAM SCRAP BUSINESS, INVOLVING AS IT WOULD SIGNIFICANT MANPOWER, EQUIPMENT AND FUNDS. OBVIOUSLY IT WOULD NOT BE IN THE US INTEREST FOR SUCH A SITUATION

TO ARISE.

6. THE AMBASSADOR HAS REQUESTED DAO TO WITHHOLD RESPOND-
ING TO REFTEL'S REQUEST FOR A SCRAP REPORT PENDING WASH-
INGTON'S REVIEW OF THE ABOVE POINTS. IT IS OUR CONCLU-
SION THAT GAO'S INTERPRETATION OF THE APPLICABILITY OF
THE DAV LEGISLATION TO SCRAP IN VIET NAM, AND DOD CON-
CURRENCE THEREIN, OVERLOOKED THE AGREEMENTS WE ENTERED
INTO IN GOOD FAITH WITH THE GVN.
MARTIN

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